

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----  
TERRY DAUM,

Plaintiff,

-v-

9:15-CV-1083  
(DNH/ML)

DELVIN, Captain; SERGEANT CROSS; and  
C. STICKNEY, Correction Officer,

Defendants.  
-----

APPEARANCES:

OF COUNSEL:

SAUNDERS KAHLER L.L.P.  
Attorneys for Plaintiff  
185 Genesee Street  
Suite 1400  
Utica, New York 13501

MICHAEL D. CALLAN, ESQ.

HON. LETITIA JAMES  
Attorney General of the State of New York  
Attorney for Defendants  
The Capital  
Albany, New York 12224

MARK G. MITCHELL, ESQ.  
Ass't Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Plaintiff Terry Daum brought this civil rights action pursuant to 42 U.S.C. § 1983.

On September 5, 2019, the Honorable Daniel J. Stewart, United States Magistrate Judge, held an exhaustion hearing on defendants' affirmative defense of failure to exhaust. On October 30, 2019, Judge Stewart advised by Report-Recommendation that defendants have

not sustained their burden of proof on the affirmative defense of failure to exhaust and that the matter proceed to trial. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. The administrative remedies under DOCCS' IGP were rendered unavailable to plaintiff and therefore his claims in this action are not barred by the PLRA based upon his failure to exhaust; and

2. Trial is scheduled for Monday, April 13, 2020 in Utica, New York. Pre-trial submissions are due on or before Monday, March 30, 2020.

IT IS SO ORDERED.



United States District Judge

Dated: December 19, 2019  
Utica, New York.